

April 15, 1993  
REPORT TO THE COMMITTEE ON RULES, LEGISLATION,  
AND INTERGOVERNMENTAL RELATIONS

REGULATING AGGRESSIVE SOLICITATION

The Mayor and Council, at their March 16, 1993, meeting, directed the City Attorney to advise the Rules Committee whether there was a means of protecting the public from aggressive panhandlers and other solicitors. San Francisco's "Aggressive Soliciting" Ordinance was cited as a possible model for providing such protection. As described hereinafter, an ordinance regulating aggressive solicitation could be drafted. We believe, however, that it would be vulnerable to successful challenge.

Panhandling has been found to be a form of charitable solicitation. As such it is entitled to First Amendment protection. The protection afforded such speech is not absolute, however. As an example, speech may be regulated in public settings when there is a "compelling governmental interest" in doing so. Protecting the public from activity which is "coercive," "threatening," or "intimidating" might be a "compelling interest," depending upon how those words are defined.

An ordinance could be drafted which would regulate only conduct directly, be content-neutral, and precisely define the conduct to be forbidden. There are two potential legal pitfalls, however. Firstly, a "compelling interest," may not be based simply upon protecting the public from annoyance. Protected speech in a public forum may not be regulated solely on the basis of the communication's being offensive or distasteful. Secondly, conduct which involves fighting words, obstruction of movement or unwanted physical contact is already prohibited by the Penal Code. Conduct that is "coercive," "threatening," or "intimidating," and not already prohibited by the Penal Code would be difficult to define in practical terms.

The ordinance would consequently be vulnerable to a two-pronged attack on constitutional and state preemption grounds.

We believe, therefore, that an ordinance regulating aggressive solicitation would have difficulty withstanding a legal challenge. Should you desire, however, we are prepared to draft

an ordinance drawn to have the best possible chance of surviving  
judicial scrutiny.

Respectfully submitted,  
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City Attorney

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